

Genieve



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JOHN A. LASOTA, JR.
ATTORNEY GENERAL

November 13, 1978

The Honorable Dick Flynn
Arizona State Representative
2323 Palm Drive
Tempe, Arizona 85282

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ARIZONA ATTORNEY GENERAL

Re: I78-260 (R78-94)

Dear Representative Flynn:

You have requested an opinion on substantially the following question:

[W]ould the proposed Arizona Renewable Energy Initiative of 1978 [enclosed] conflict with the constitutionally mandated duties of the Corporation Commission? If so, what would have to be changed to accomplish the initiatives?

In essence you have asked whether the provisions of the initiative measure, which purport to place exclusive authority for the authorization, siting, construction and operation of power generating facilities in an Arizona Energy Commission, would conflict with the constitutional powers reposed in the Corporation Commission for the regulation of public service corporations.

Clearly, if there is such a conflict, the critical portions of the initiative would fall. An initiative measure differs from an act of the Legislature only in that a law enacted by initiative "can only be repealed in the same manner in which it was adopted." Iman v. Bolin, 98 Ariz. 358, 364 (1965). Thus, the initiative measure stands in the same position vis-a-vis constitutional provisions as does an act of the Legislature. Our Supreme Court has consistently held that any law in conflict with the grant of constitutional power to the Corporation Commission is unconstitutional. See, e.g., Arizona Corporation Commission v. Superior Court, 105 Ariz. 56, 62 (1969). The only remaining question, then, is whether the provisions of the initiative measure would conflict with the constitutionally vested powers of the Commission over public service corporations.

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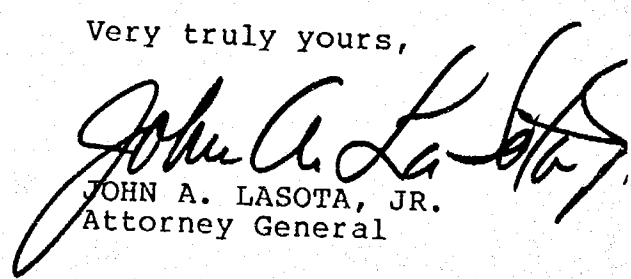
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Unfortunately, the state of the case law on the Corporation Commission's powers is such that we are unable to predict, with any likelihood of success, the answer to your question. Our problem may be better understood by comparing Corporation Commission v. Pacific Greyhound Lines, 54 Ariz. 159 (1939), and the cases cited therein, with Arizona Corporation Commission v. Superior Court, 105 Ariz. 56 (1969). The short of the matter is that the legal sufficiency of this initiative measure could be determined only by a court test in the event that the measure were to become law.

In our telephone conversation of November 2, you asked whether this initiative would be more certain of being held valid if it were treated as an initiative constitutional amendment.

Certainly, if the substance of the measure were adopted as a constitutional amendment, it would more likely be held valid than if it were merely an initiated law. One word of caution, however. As it is now drafted, the measure is clearly a legislative enactment, not a proposed constitutional amendment. If the measure is submitted in its present form to the Secretary of State, it would not be treated as a constitutional amendment, even if the petitions contained the signatures of over 15% of the votes cast for all candidates for Governor at the general election last preceding the filing of the initiative petition. See Iman v. Bolin, 98 Ariz. 358, 364, 404 P.2d 705 (1965). Revision would be necessary to qualify it as a constitutional initiative.

Very truly yours,


JOHN A. LASOTA, JR.
Attorney General